

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
Dallas, Texas 75270**

In the Matter of

**The Cherokee Nation
W.W. Keeler Tribal Complex
Tahlequah, OK 74464**

Respondent.

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Docket No. CWA-06-2022-1771

ADMINISTRATIVE ORDER ON CONSENT

STATUTORY AUTHORITY

The following Findings of Fact and Conclusions of Law are made, and Administrative Order on Consent (Order) issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a). The Administrator delegated this authority to the Regional Administrator of EPA Region 6, who further delegated such authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 6.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. EPA makes the following Findings of Fact and Conclusions of Law in support of its authority to issue this Order on Consent.
2. The Cherokee Nation (Respondent) is a federally recognized Indian Tribe under section 104 of the Federally Recognized Indian Tribe List Act, now codified at 25. U.S.C. § 5131, and 87 Fed. Reg. 4636) (January 28, 2022).
3. For purposes of federal enforcement, Respondent is a “person,” as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
4. Respondent owns and operates the disposal of sewage, industrial wastes, or other wastes.

5. At all times relevant to this Order, Respondent owned or operated the Cherry Tree Wastewater Treatment Non-Discharge Lagoons and Collection System (facility) located in and serving the community of Cherry Tree, a census-designated place in Adair County, Oklahoma, and was, therefore, an “owner or operator” within the meaning of 40 C.F.R. § 122.2.
6. A sanitary sewer cleanout(s) and manholes acted as “point sources,” as defined by Section 502 (14) of the Act, 33 U.S.C. § 1362(14).
7. At all relevant times, the facility acted as a “point source” of a “discharge” of “pollutants” (as those terms are defined by Section 502 of the Act and 40 C.F.R. § 122.2) specifically municipal wastewater to Hanging Dog Creek, which flows into Sallisaw Creek, a tributary of the Arkansas River, which is a “water of the United States” within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.
8. At no time during the relevant time period did Respondent have National Pollutant Discharge Elimination System (NPDES) permit coverage under the Act which authorized the discharge of a pollutant from the facility to waters of the United States.
9. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
10. The Oklahoma Department on Environmental Quality (ODEQ) investigated the Facility on March 28, 2022, for a reported sanitary sewer overflow (SSO or unauthorized discharge). The ODEQ inspector documented in a corresponding inspection report (complaint # 174124) an observed SSO that occurred from a cleanout which flowed down the street and into the Cherry Tree storm drainage system, and thereby to have discharged pollutants to waters of the United States. ODEQ further documented in similar investigative reports that such SSOs have allegedly occurred for several years.

11. On April 20, 2022, EPA conducted a sanitary sewer compliance evaluation inspection of the facility's wastewater collection system. During this inspection, EPA observed issues with Respondent's wastewater utility operations and maintenance demonstrating problems that contribute to SSOs. The inspector observed that an SSO occurred from a clean-out on private property (located at latitude and longitude = 35.753999, -94.643037) that flowed through an eroded drainage swale, over the adjacent concrete curb and down the street, and into the Cherry Tree storm drainage system.
12. Each unauthorized discharge under the Act and each day an unauthorized discharge occurs, is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

II. CONSENT AGREEMENT

13. EPA and Respondent agree that settlement of this matter will save time and resources and is in the public interest, and that issuance of this Order is the most appropriate means of resolving this matter. Respondent concurs in the issuance of this Order and agrees to comply with the Order. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth above.

III. SECTION 309(a)(3) ADMINISTRATIVE ORDER ON CONSENT

14. Based on the foregoing Findings of Fact and Conclusions of Law and pursuant to the authority of Section 309(a) of the Act, 33 U.S.C. § 1319(a), EPA ORDERS, and Respondent agrees to the following:
15. Respondent shall complete the following tasks listed in the below Schedule of Activities to achieve compliance with the requirements of the Act:

SCHEDULE OF ACTIVITIES	
Activity	Due Date
New Cherry Tree Force-main and Lift Station Rehabilitation Project	
Task A: Advertise for Bid and Award Construction	October 31, 2022
Task B: Project Completion, Operation, and Contingencies	July 31, 2023
Cherry Tree Sanitary Sewer System Cleaning and Assessment	

SCHEDULE OF ACTIVITIES	
Activity	Due Date
Task C: Collection System Cleaning and Assessment Start	September 30, 2022
Task D: Collection System Cleaning and Assessment Finish	March 31, 2023

16. Within forty-five (45) days after the completion date, Respondent shall submit to EPA a Project Completion Report for each “Task” listed in the Schedule of Activities directly above. The Project Completion Report shall contain the following information:
- 1) a detailed description of the Project as implemented;
 - 2) a description of any operating problems encountered and the solutions/responses;
 - 3) certification that the Project has been fully implemented pursuant to the Order;
 - 4) photographs of the Project activities, costs, and materials purchased; and
 - 5) photographs of the Project actions from the issue date of this Order to conclusion of the Project.
17. In the Project Completion Report submitted to EPA pursuant to this Order, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

18. If Respondent would like to arrange a meeting with EPA to discuss the allegations in this Order, it should contact EPA within fifteen (15) days of the effective date of this Order. The meeting may be held via video meeting or physically will be held at the Region 6 offices, 1201 Elm Street, Dallas, TX, or virtually, and Respondent can provide any information it believes is relevant to this Order. Respondent shall submit to EPA all information or materials it considers relevant to EPA at least ten (10) days prior to the meeting.
19. To arrange a meeting, or to ask questions or comment on this matter, please contact Mr. Damon McElroy, of my staff, at (214)-665-7159.
20. All correspondence unless otherwise described should be addressed to:

Damon McElroy
Water Enforcement Branch (ECD-WR)
U.S. EPA, Region 6
1201 Elm St. Suite 500
Dallas, TX 75270-2102
mcelroy.damon@epa.gov

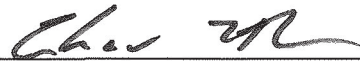
IV. GENERAL PROVISIONS

21. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review that Respondent may have with respect to any issue or fact or law set forth in this Order, including, but not limited to, any right of judicial review of this Order under Sections 701 through 706 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
22. Respondent acknowledges the jurisdiction of EPA to issue the Section 309(a)(3) Order.
23. Issuance of this Order on Consent shall not be deemed an election by EPA to forego any administrative or judicial, civil or criminal action to seek penalties, fines or any other relief appropriate under the Act for the violations cited herein or other violations that become known to EPA.

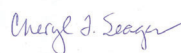
24. If EPA issues an administrative complaint or a civil judicial action is initiated by the U.S. Department of Justice, Respondent may be subject to a monetary penalty. The failure to comply with this Order or the Act can result in civil penalties of up to \$59,973 per day of violation. If a criminal action is initiated by the U.S. Department of Justice, Respondent may be subject to a fine and/or imprisonment and may also become ineligible for certain government contracts, grants or loans under Section 508 of the Act, 33 U.S.C. § 1368.
25. Compliance with the terms and conditions of this Order on Consent does not relieve Respondent of the obligation to comply with any applicable federal, state or local law or regulation.
26. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of Paragraph 14 is restitution, remediation, or required to come into compliance with the law.
27. EPA and Respondent agree to the use of electronic signatures for this matter. EPA and Respondent further agree to electronic service of this Consent Order by email to the following addresses:
 - a. To EPA: mcelroy.damon@epa.gov
 - b. To Respondent: chad-harsha@cherokee.org
28. The parties shall bear their own costs and fees in this action, including attorneys' fees.
29. The effective date of this Order is the date it is signed by all parties.
30. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.

In recognition and acceptance of the foregoing:

Date 8/3/22


Mr. Chad Harsha,
Secretary of Natural Resources
Cherokee Nation

Date August 11, 2022


Digitally signed by
CHERYL SEAGER
Date: 2022.08.11 14:09:22
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Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division